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Counsel for Defendant-Intervenor

Council for Christian Colleges &

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
Eugene Division

ELIZABETH HUNTER, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF EDUCATION,
et al.,

Defendants,

v.

COUNCIL FOR CHRISTIAN
COLLEGES & UNIVERSITIES,
WESTERN BAPTIST COLLEGE d/b/a
CORBAN UNIVERSITY, WILLIAM
JESSUP UNIVERSITY AND PHOENIX
SEMINARY,

Defendants-Intervenors.

No. 6:21-CV-00474-AA

DEFENDANTS-INTERVENOR
COUNCIL FOR CHRISTIAN
COLLEGES & UNIVERSITIES'S
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEF

LR 7-1(A) CERTIFICATION

Defendant-Intervenor Council for Christian Colleges & Universities (CCCU) certifies that, as required by LR 7-1(A), it has made a good faith effort to confer with counsel for the parties. Neither Plaintiffs nor the Western Baptist College, William Jessup University, and Phoenix Seminary oppose the relief sought by this motion. The Government Defendants expressed a need to review the proposed filing before determining their position.

MOTION

CCCU respectfully moves for leave to file a brief of supplemental facts responsive to the facts alleged in Plaintiffs' supplemental brief, ECF No. 178. CCCU continues to believe that any supplementation of the record is unnecessary and improper given the fact that the record related to the preliminary-injunction motion has been closed for over a year. *See* ECF No. 182 (explaining substantive and procedural concerns with Plaintiffs' filing). But because this Court has not yet stricken that filing from the record, CCCU seeks the Court's leave to submit a response to Plaintiffs' claims on the merits before this Court's ruling on the pending motions moots its request to strike.

ARGUMENT

For the following reasons, the motion should be granted if this Court decides to consider the facts contained in Plaintiffs' supplemental brief.

First, the only reason that CCCU did not submit this information on its own is because it considered the record closed. If this Court were to accept Plaintiffs'

supplemental brief and the factual attachments that came with it, it would mean that the assumption on which CCCU has operated for more than a year was incorrect.

Second, if this Court does accept Plaintiffs' supplemental brief, then fairness and due process requires an opportunity for the other parties to respond. *United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014), *abrogated on other grounds* by *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959 (2020) ("Due process always requires, at a minimum, notice and an opportunity to respond."). The brief CCCU seeks to file with this motion provides CCCU with that opportunity.

Third, allowing CCCU to supplement the record if the Court allows Plaintiffs to do so will not prejudice the other parties in this case or the Court. The Court has already indicated that it intends to rule on the pending motions by year's end, and the short supplemental filing CCCU includes here should not affect that timeline.

For these reasons, CCCU's motion for leave to file should be granted and CCCU should be allowed to file the attached supplemental brief to respond on the merits to Plaintiffs' latest claims.

Respectfully submitted,

December 9, 2022

/s/ Gene C. Schaerr

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CERTIFICATE OF COMPLIANCE

This document complies with the length limit requirements of Local Rule 7-2 because it contains 422 words excluding the signature block, exhibits, and any certificates of counsel.

December 9, 2022

/s/ Gene C. Schaerr
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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2022, I served this document on all counsel of record by ECF and by email.

/s/ Gene C. Schaerr
Gene C. Schaerr
Counsel for Defendant-Intervenor
Council for Christian Colleges &
Universities